

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
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Gregory Scott

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of Calpine  
Corporation for a Certificate of Need for a  
Large Electric Generating Facility

ISSUE DATE: April 6, 2004

DOCKET NO. IP-6345/CN-03-1884

ORDER FINDING APPLICATION  
SUBSTANTIALLY COMPLETE  
CONTINGENT UPON ADDITIONAL  
FILING AND REFERRING MATTER TO  
THE OFFICE OF ADMINISTRATIVE  
HEARINGS

**PROCEDURAL HISTORY**

On November 14, 2003, Calpine Corporation (Calpine) filed a petition stating that it intended to submit an application for a certificate of need to construct a natural-gas-fired combined cycle electric-generating facility at a site near Mankato. The petition requested exemptions from certain data requirements in the certificate of need rules,<sup>1</sup> claiming that the data in issue is not applicable to a generation project proposed by an independent power producer, not reasonably available to Calpine or not necessary to determine the need for the proposed facility.

Calpine's petition also requested that the Commission confirm that the scope of the required data should relate only to power generated for the wholesale market, excluding data related to power production already certified through a Commission-approved resource plan solicitation.<sup>2</sup>

On February 6, 2004, the Commission issued its ORDER GRANTING EXEMPTIONS FROM FILING REQUIREMENTS AND LIMITING SCOPE. The Order granted Calpine's request for exemptions from specific data requirements and also granted Calpine's request to limit the scope of its certificate of need application with certain qualifications.

On March 2, 2004, Mankato Energy Center, LLC (Mankato Energy), a wholly owned subsidiary of Calpine, filed its certificate of need application for the portion of the plant that is not included in

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<sup>1</sup> Minn. Rules, parts 7849.0010 et seq.

<sup>2</sup> See Minn. Stat. § 216B.2422, subd. 5.

a pending contract with Northern States Power Company d/b/a Xcel Energy (Xcel), pursuant to a Commission approved bidding process.<sup>3</sup>

On March 12, 2004, the Department of Commerce and Minnesotans for an Energy-Efficient Economy (ME3) each filed comments on the completeness of Mankato Energy's application.

On March 23, 2003, the Purchased Power Agreement (PPA) between Xcel and Mankato Energy was submitted for approval in Docket No. E002/M-04-451.

The matter came before the Commission on March 23, 2004.

## **FINDINGS AND CONCLUSIONS**

### **I. Mankato Energy's Proposal**

Mankato Energy proposed building a power plant using natural gas-fired combustion turbines in a combined cycle configuration, which will be capable of generating approximately 655 megawatts (MW) of electric power at summer ambient conditions and 730 MW at winter ambient conditions. This generating capacity includes both baseload capacity (approximately 505 MW) and peaking capacity (approximately 150 MW) to be obtained from power augmentation equipment.

The facility will use natural gas with low-sulfur distillate oil as a back-up fuel. The facility as a whole will include two combined cycle combustion turbine generators, two heat recovery steam generators equipped with duct burners, one steam turbine generator/condenser, and one multi-cell mechanical draft-cooling tower, and various other machinery and equipment.

Mankato Energy has committed to supply approximately 375 megawatts of power to Xcel after being selected in a bidding process approved by the Commission. Mankato Energy will offer the power not committed to Xcel in the PPA to wholesale customers, including Minnesota utilities and cooperatives.

In the application herein, Mankato Energy seeks a certificate of need for the wholesale power production of the facility. This portion of the facility could produce 355 MW at ambient winter conditions and 325 MW at summer ambient conditions.

The portion of the facility that will generate the wholesale power includes one combustion turbine, one heat recovery steam generator and two additional cells on the cooling tower. In addition, both the lateral natural gas pipeline connection and the water supply and discharge pipelines will be slightly larger than they would be if the facility was built only to satisfy the requirements of the PPA.

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<sup>3</sup> *In the Matter of Northern States Power Company's Application for Approval of its 2000-2014 Resource Plan*, Docket E-002/RP-00-787, ORDER APPROVING XCEL ENERGY'S 2000-2014 RESOURCE PLAN, AS MODIFIED (August 29, 2001).

The facility site is approximately 25 acres in size and is located north of the Mankato City limits within Lime Township. It will connect to the Northern Natural Gas pipeline approximately four miles east of the site and will have direct access to the transmission grid at the Wilmarth Substation approximately 1,500 feet west of the site. Mankato Energy is planning to have the facility in-service by mid-2006.

## **II. General Requirements**

The generation facility described in Mankato Energy's application falls under the definition of "large energy facility" in Minn. Stat. § 216B.2421, subd. 2 (1). Therefore, in accordance with Minn. Stat. § 216B.243, subd. 2, the generation portion of the project, as described in the application, cannot be sited or constructed in Minnesota unless the Commission issues a certificate of need to the Applicant. The certificate of need rules that specify application requirements are Minn. Rules, parts 7849.0010 to 7849.0400.

## **III. APPLICATION SUBSTANTIALLY COMPLETE**

### **A. Applicable Rule**

Minn. Rules, part 7849.0200, subp. 5 states as follows:

**Complete applications.** The commission must notify the applicant within 30 days of the receipt of an application if the application is not substantially complete. On notification, the applicant may correct any deficiency and may resubmit the application. If the revised application is substantially complete, the date of its submission is considered the application date.

### **B. DOC's Recommendation**

The DOC recommended that the Commission find the application complete pending the submission of the following data:

- Minn. Rules, part 7849.0250, A(3) – a projection of the availability of fuel over the projected life of the facility, and any alternate fuels.
- Minn. Rules, part 7849.0250, C(9) – major assumptions in providing the information for the proposed project and its available alternatives, including the projected escalation rates for fuel costs and operating and maintenance costs.
- Minn. Rules, part 7849.0310 and 7849.0320 – environmental information on the proposed facility and for each alternative considered.

The DOC also recommended that Mankato Energy provide a status report on the PPA to be entered into between Mankato Energy and Xcel.<sup>4</sup>

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<sup>4</sup> The PPA was filed on March 23, 2004.

Finally, the DOC indicated that it would not oppose condensing the need and the permitting process if the Commission and the Environmental Quality Board (EQB) conclude that a joint hearing is reasonable, more efficient and may further the public interest.

### **C. Mankato Energy's Response**

At hearing, Mankato Energy agreed to provide the supplementary information requested by the DOC. Mankato Energy also indicated that it supported a joint hearing with the EQB and referral of the matter to the OAH for a contested case proceeding.

### **D. ME3**

ME3 argued that the Mankato Energy should be required to provide an analysis of a wind-gas combination alternative to the proposed facility, as provided for in Minn. Rules, part 7849.0250 B(5). ME3 argued that such an alternative might provide the same value as the Mankato Energy proposal, but with lower energy costs.

### **E. Commission's Analysis and Action Regarding Completeness of the Application**

The Commission finds that contingent upon Mankato Energy's submission of the supplementary material that addresses each item found lacking by the Department, and the analysis of a wind-gas combination as recommended by ME3, Mankato Energy's application is substantially complete within the meaning of Minn. Rules, Part 7849.0200, subp. 5.

Likewise, as provided by the rule, the date that the supplemental material is filed will be considered the application date for purposes of beginning the Commission's six-month review period.

The Commission further clarifies that the Applicant's obligation to provide information about its proposed project does not end with a finding that its application is substantially complete. Any remaining concerns about the accuracy or breadth of the filed information can, of course, be addressed with discovery requests and tested during the course of the proceeding.

## **IV. CONTESTED CASE PROCEEDING APPROPRIATE**

If the proceeding were started as an informal proceeding but factual disputes arose later, the proceeding could take more time than if it were started as a contested case. In addition, Minn. Stat. § 216B.243, subd. 4 indicates that the Commission "shall hold at least one public hearing pursuant to chapter 14." Someone will have to run that hearing and administrative law judges are accustomed to performing that role.

In these circumstances, therefore, the Commission finds that treating this matter as a contested case at the outset is administratively efficient and prudent, particularly in light of the tight timeline established for reaching a decision on the merits of this application.

Accordingly, the Commission will refer Mankato Energy's application to the Office of Administrative Hearings for a contested case proceeding. The Commission is issuing a NOTICE AND ORDER FOR HEARING before the Administrative Law Judge (ALJ) assigned to this matter contemporaneously with this Order.

## **V. PROSPECT OF JOINT HEARINGS**

The Commission has responsibility to determine whether to grant a certificate of need for the project in question and the EQB has the responsibility to grant or deny a site permit for the project.

Minn. Stat. § 216B.243, subd. 4 provides that a joint hearing may be held on siting and need issues if the Commission and the EQB determines that a joint hearing on the siting and need is feasible, more efficient, and may further the public interest.<sup>5</sup>

At the hearing on this matter, the Department and Mankato Energy stated their belief that joint hearings on the Company's application to the EQB for site and route permits and on its application to the Commission for a certificate of need would be more efficient than separate hearings, since the time frames of these applications are essentially the same and the people and parties interested in these matters are also largely the same.

The Commission favors administrative efficiencies in general, consistent with due consideration to the issues to be addressed. Accordingly, it will approve joint hearings in this case and authorize its staff to request that the ALJ adopt a hearing schedule that provides for at least some joint hearings in this matter, if the EQB similarly agrees that joint hearings are appropriate.

### **ORDER**

1. The Commission shall require Mankato Energy to submit a supplement to its application containing the following information:
  - a. Minn. Rules, part 7849.0250, A(3) – a projection of the availability of fuel over the projected life of the facility, and any alternate fuels.
  - b. Minn. Rules, part 7849.0250, C(9) – major assumptions in providing the information for the proposed project and its available alternatives, including the projected escalation rates for fuel costs and operating and maintenance costs.
  - c. Minn. Rules, part 7849.0310 and 7849.0320 – environmental information on the proposed facility and for each alternative considered.
  - d. Minn. Rules, part 7849.0250 B(5) – an analysis of a wind-gas combination alternative.
2. Mankato Energy's application shall be accepted as substantially complete contingent upon the filing of the supplementary information required in ordering paragraph 1. Additional information may have to be provided by Mankato Energy to the EQB and the DOC to facilitate preparation of an environmental review document and a thorough review of the proposed project.

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<sup>5</sup> Similarly, see Minn. Rules, Part 4410.7060, subp. 4

3. The date the supplementary materials are filed shall be the official application date for Mankato Energy's proposal.
4. The Commission refers this matter to the Office of Administrative Hearings for a contested case proceeding, including the public hearing required as part of the review of a Certificate of Need Application for a large energy facility.
5. Pursuant to Minn. Stat. § 216B.243, subd. 4, the Commission hereby approves holding joint hearings on the issues raised in 1) the Company's siting petition to the EQB and 2) the Company's application for certificate of need in this docket. If joint hearings are acceptable to the EQB, Commission Staff is authorized to request at the prehearing conference, held pursuant to the Commission's referral of this matter to the Office of Administrative Hearings, that the Administrative Law Judge (or Judges) assigned to the case adopt a schedule that includes joint hearings on the siting and need issues.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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